

***United States Court of Appeals
for the Second Circuit***



APPENDIX

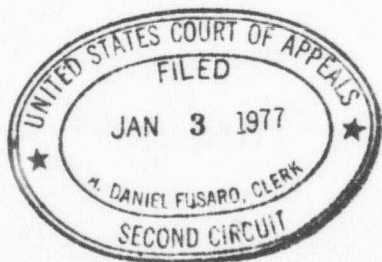
76-7530

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
: In the Matter of the Arbitration
: -between- :
: PETROLEUM TRANSPORT, LTD., : 76-7530
: Owners of the IONIAN CHALLENGER, :
: Petitioner-Appellant, :
: -and- :
: YACIMENTOS PETROLIFEROS FISCALES, :
: Charterers, :
: Respondent-Appellee. :
-----x

APPENDIX

B P/S



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DATE	NR.	PROCEEDINGS
02-06-76	(1)	Filed Petition to Compel Arbitration.
02-20-76	2	Filed Petitioner's affdvt & notice of petition re: order vacating award made in captioned arbitration but confirming part of findings made by the arbitration panel and remanding matter to arbitration panel or in alternative for an order simply vacating award, etc. ret. 3/2/76.
02-20-76	3	Filed Petitioner's Memorandum of Law.
05-18-76	4	Filed Affdvt by George C. Pendleton in opposition to petitioner's motion to vacate an award of arbitrators.
05-18-76	5	Filed Respondent's Memorandum of Law.
05-27-76	6	Filed Affdvt of Joseph Cardillo, Jr. in reply to respondent's opposing affdvt & in support of petitioner's motion.
05-27-76	7	Filed Petitioner's reply Memorandum of Law.
09-21-76	8	Filed Opinion # 45129... Petroleum Transport, Ltd. ("Petroleum") has petitioned this Court, pursuant to Section 10 of the Arbitration Act, 9 U.S.C. 1 to 14 inclusive, for an order vacating the Award made in this arbitration proceeding but confirming part of the findings made by the arbitration panel and remanding the matter to the arbitration panel or in the alternative for an order simply vacating the award... Petitioners' Motion is denied in all respects with costs to the respondent. So Ordered. Tenney J. mn Judgment entered Clerk 10-28-76
09-23-76	9	Filed Stip and Order that the time for Respondent to answer the Petition is extended to 04-06-76. So Ordered. Tenney J.
09-23-76	10	Filed Stip. that the return date of the motion is adjourned to 05-20-76. So Ordered. Tenney J.
09-23-76	11	Filed Stip. that the Petitioners motion is adjourned and made returnable 05-27-76, and that Petitioners time to serve papers in reply to Respondents opposing papers is extended to 05-27-76. So Ordered. Tenney J.
10-21-76	12	Filed petitioner's notice of appeal from order denying motion for order vacating award, etc. mailed copies.
11-22-76	13	Filed Notice that original record on appeal certified and transmitted to USCA, 2nd Circuit.

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In the Matter of Arbitration of
Dispute
between
PETROLEUM TRANSPORT, Ltd.,
Owners of the SS IONIAN CHALLENGER
and
YACIMIENTOS PETROLIFEROS FISCALES,
Charterers

ARBITRATION
AWARD

Arbitrators

Arthur E. Ferris, Esq.
Chairman
Bruno J. Augenti
Peter Siebel, Jr.

APPEARANCES:

For Owners: Messrs. Cardillo & Corbett
Joseph Cardillo, Esq., of Counsel

For Charterers: Messrs. Pendleton & McLaughlin
George C. Pendleton, Esq., of Counsel

The parties involved in this case are Petroleum Transport, Ltd.,
Owners of the IONIAN CHALLENGER and Yacimientos Petroliferos Fiscales
of Argentina, commonly known as Y.P.F.

Two hearings were held and numerous exhibits were presented
for study by the Arbitrators. The facts are as follows:

Pursuant to a tender published by Y.P.F. looking for vessels to
make various liftings from the Persian Gulf to Argentina, a number of
owners offered their vessels to Y.P.F. on September 4, 1973. Included
was an offer by the claimant herein, the Owner of the IONIAN CHAL-
LENGER, at the rate of World Scale 397 1/2. (When the case was first
submitted to arbitration, it was thought that the offer had been made
at W. S. 405 and the claim for damages was prepared on that basis.
Subsequent information showed that the offer was actually at W. S.
397 1/2 and the claim has been modified accordingly.)

The IONIAN CHALLENGER is a vessel of 41,512 MT, with a draft

of about 11.17 meters. Other offers submitted, of a total of twelve, ranged from W. S. 350 for a 50,000 Tonner (unusable) to W. S. 415 for a vessel of 34,000 DWT, the SAVINA and W.S. 415 for the ASPASIA WOM-IKOS, a vessel of 20,641 DWT. The MINA a vessel of 32,600 DWT and draft of 10.9 meters, frequently mentioned in this arbitration, was offered at W S. 405 and was fixed at W.S. 400. Two vessels of 28,500 and 25,500 Tons cargo respectively, were offered at W.S. 450 and W.S. 420 respectively.

The offer to Y.P.F. by the Owner of the IONIAN CHALLENGER contained the statement that it was "prepared to consider the counter offers that YPF might propose." As a matter of interest and information, it should be mentioned that the IONIAN CHALLENGER, at the time of the offer, was about to conclude a voyage for YPF. On this earlier tender, Owners had offered the vessel at W.S. 345 and accepted a counter of W.S. 290, a drop of 55 points. The drop in the instant case between offer and counter was exactly half, or 27.5 points (397.5 to 370).

On September 4, 1973 at about 1750 Hrs., London time, Owner accepted the counter of W.S. 370 but claims that it was induced to do so by fraudulent misrepresentations by YPF; that the market rate was actually W.S. 400 as evidenced by the fixture of the MINA one hour later. Further, that having performed the voyage without waiving its rights (and in fact specifically preserving them) Owner claims to be entitled to the difference of roughly \$90,000 plus interest plus punitive damages of 10% plus attorneys' fees, for a total claim of \$180,000 to \$200,000 or more.

The claim is based on this language in a Telex (No. 7 of Owner's Exhibit 1) - "Repeat they closed 3 Milanowskis at 370" (one of which

was the MINA). The telex quoted above was sent at about 1716 Hrs. on September 4, 1973 from Altamar, the broker in Buenos Aires to Vincent Smith, the broker in London with whom [sic] Altamar was working. The Owners' broker, Seascope, was working with Vincent Smith, and Altamar was working with YPF. One of the 3 Milanowskis mentioned was the MINA which by charterer's broker's own admission was not fixed at W. S. 370 but was "chartered at 400 at about 1850 hrs. on September 4th," almost an hour after the mentioned Telex.

In fact, this statement that 3 Milanowski offered vessels had closed at W.S. 370 was untrue and when Owner discovered this, it dispatched a strong protest to Argentina for transmission to YPF asking for 'release' of the vessel or a confirmation at W.S. 400. YPF's response was in the form of a telex to Altamar with copy to Vincent Smith which contained the following language - "At no time during the negotiations carried out through you was it stated that Y.P.F. had contracted other ships at W.S. 370 - It was simply stated that a counter offer of W.S. 370 had been made and that it was considered that this would be accepted by the Owners...". YPF concluded with the request that Owners confirm they will perform "otherwise this firm will proceed with the strictest precautionary measures against all those involved in this operation in defense of its interests."

Owners performed while preserving their rights and then brought its claim to arbitration. A Charter Party was prepared and signed by Owner and sent to YPF. But it seems never to have been signed. Nevertheless, performance was had, freight was paid at the W.S. 370 level, and both parties conceded that a valid maritime contract had been entered into and the Arbitrators had jurisdiction to decide this case.

The Owners of the SAVINA also accepted the W.S. 370 rate but, although it had protested the misrepresentation, it withdrew its protest and, for reasons not before this panel, did not make a claim against YPF.

The panel finds unanimously that the claimant suffered no damage. If it had refused to perform and sought business elsewhere it would have been in no better position than the vessels worked by Milanowski which received the same counter of W.S. 370 and refused to fix. They subsequently fixed to others at the W.S. 370-375 level; other vessels fixed in this period were fixed at W.S. 350 and lower.

We find that the rate obtained by the MINA (higher than the rate offered by the IONIAN CHALLENGER) was a special rate for a smaller and more suitable ship for the LaPlata trade, (33,253 MT v. 41,512 MT) and perhaps had a better position and fitted a special need. Certainly, barging costs to YPF in discharging the MINA were less than for the IONIAN CHALLENGER because its draft was about 4 feet less. In any event, we find that the market for vessels similar to the IONIAN CHALLENGER at this time was about W.S. 375-370 and heading downwards.

The claimant's attorney makes a very strong case that the ethics of the steamship industry are of such paramount importance that any departure from sound ethics must be dealt with promptly and firmly. There can be very little doubt that in an industry in which agreements involving the payment of hundreds of thousands and even millions of dollars are made orally over the phone and regularly honored despite wide fluctuations in the market rate, high standards must be adhered to and honesty and fair dealing must underlie all transactions. We fully support this stance.

Because of the nature of this case, Panel devoted considerable

time and attention to its duty of determining how the costs should be apportioned. The evidence having been given solely through presentation of documents - copies of letters, telexes, cablegrams, briefs, etc. - the panel determined that it was necessary to secure affidavits from both sides responding to questions posed. The response of the YPF witness specifically stated that he swore to it. But the document received appears nevertheless not to have been sworn to before any official and is merely a signed statement. Whether sworn to or not, it does not adequately answer the questions posed by the panel and raises the distinct possibility that while the misrepresentation may not have originated with YPF, YPF was aware of it and, even more important, was prepared to take advantage of it. That a false impression was conveyed by what was stated is clear and, as stated by Mr. Justice Kerr in the Occidental case (Occidental Worldwide Investment Corp. vs. Skibs A/S Avanti April 25, 1975) "It is settled law that a misrepresentation is material even if it was not the sole cause which led the misrepresentee to act as he did. He need not prove that he would not have entered into the contract in question if the misrepresentation had not been made; it is sufficient if he was materially influenced by the misrepresentation; see generally Chitty op. cit Art. 274."

The panel received no evidence on which it could decide the source of the misrepresentation - whether YPF, or Altamar, or both. Altamar is not a party to this arbitration, but it is located in YPF's home territory and an affidavit from an Altamar official could easily have been obtained. No affidavit from Altamar has been submitted and the language in the YPF "affidavit" concerning YPF's discussion with Altamar in September 1973 is so vague as to be meaningless. If its essence

is that Altamar is the sole party at fault, YPF has practical remedies to redress itself.

The panel does not mean by its decision to allow an owner to cease behaving in a prudent fasion [sic] and to forego making its determination on the basis of experience and judgment. The record shows continuous pressure by the Argentine brokers for an immediate acceptance of the W.S. 370 counter offer lest the opportunity to do the business be lost. We sought information with regard to this question and the sworn affidavits submitted satisfy the panel that in this case the Owners, under the pressure of time, the Argentine brokers and a falling market, acted prudently. Nevertheless, Owners and Charterers must remember that they are not total innocents and "puffing", as distinct from misrepresentation, may always be with us.

The issue here is of such importance that the majority of this panel has determined that since this dispute resulted from actions of a person or persons directly or indirectly working with or for Charterers, YPF will pay all costs of this arbitration including arbitrators' fees, stenographic fees and claimant's reasonable attorney fees, with interest thereon at 7% commencing one mongh [sic] after same have been submitted to YPF.

Mr. Siebel's partial dissent is given below.

s/ Arthur E. Ferris

Arthur E. Ferris, Chairman

s/ Bruno J. Augenti

Bruno J. Augenti

s/ Peter Siebel, Jr.

Peter Siebel, Jr.

Dated at New York, New York

this 24th day of October 1975.

Partial Dissent of Mr. Peter Siebel, Jr.

It is the opinion of this Arbitrator that the matter of Misrepresentation, while being serious and not excusable, was not the actual act of the Charterer. I further believe that the normal chartering brokering pressure, while overdone in this instance, was reacted to by Owners only after it was seen to be for his advantage.

It is my firm position that this matter went into arbitration only because neither Party would concede or negotiate any part of the dispute. Since two parties are necessary to have a dispute, it therefore follows that each party should pay his own legal costs that ENSUE PSJr ensure and that neither party should be assessed any part of the other's legal costs.

I concur that the arbitrators' fees and the stenographic fees of the arbitration should be the burden of YPF.

s/ Peter Siebel Jr.

Peter Siebel, Jr.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In the Matter of the Arbitration :

-between- :

76 Civ. 624 (CHT)

PETROLEUM TRANSPORT, LTD., :
Owners of the IONIAN CHALLENGER, :

Petitioner, :

-and- :

YACIMIENTOS PETROLIFEROS FISCALES, :
Charterers, :

Respondent. :
-----x

MEMORANDUM

APPEARANCES

For Petitioner: CARDILLO & CORBETT
29 Broadway
New York, N.Y. 10006

Of Counsel: JOSEPH CARDILLO, JR., ESQ.
TULIO R. PRIETO, ESQ.

For Respondent: PENDLETON & McLAUGHLIN
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Of Counsel: DAVID I. GILCHRIST, ESQ.
JOHN H. CLEVELAND III, ESQ.

HILL, F. TTS & NASH
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New York, N.Y. 10048

A 14

TENNEY, J.

Petroleum Transport, Ltd. ("Petroleum") has petitioned this Court, pursuant to Section 10 of the Arbitration Act, 9 U.S.C. §§ 1 to 14 inclusive, for an order vacating the award made in this arbitration proceeding but confirming part of the findings made by the arbitration panel and remanding the matter to the arbitration panel or in the alternative for an order simply vacating the award. The grounds alleged are that the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy and that the arbitrators so imperfectly executed their powers that a final and definite award upon the subject matter submitted was not made.

The arbitration proceeding arises out of alleged deceit practiced by Yacimientos Petroliferos Fiscales ("YPF") on Petroleum in connection with the charter of Petroleum's tanker, Ionian Challenger. The parties hereto nominated their arbitrators on September 17, 1974 who in turn selected a Chairman. Hearings were held on December 16, 1974 and February 3, 1975. At the outset of the first hearing the Chairman advised the parties that after the arbitrators had made their determination they would notify the parties that the award was ready for release, and that upon receipt of the arbitrators' fees and expenses the award would be released. At the hearing YPF intro-

duced evidence as to the rates at which it had subsequently chartered ships. At the conclusion of the hearing of February 3, 1975 the Chairman stated on the record:

"Both parties having stated that they have no further evidence to submit, other than that which will be forthcoming by mail and will not be a part of the transcript, this hearing is closed at approximately 4:35 p.m. on the 3rd of February."

A schedule for briefing was agreed upon and on March 11, 1975 counsel for YPF wrote to the arbitrators stating:

"The final date for filing of additional exhibits and/or briefs was set for 10 March 1975.

"Since I have not received any additional material I have nothing to file in rebuttal. Therefore, I consider the record closed and submitted for decision."

On March 13, 1975 counsel for Petroleum having received a copy of the above-quoted letter of March 11, 1975 wrote to the arbitrators advising that the lawyer assigned to Petroleum's case had been taken seriously ill, that the lawyer had further material he intended to submit to the arbitrators, and requesting that the record be kept open. On March 17, 1975 counsel for Petroleum wrote the arbitrators advising he had no objection to opposing counsel's request.

Petroleum's post-hearing memorandum was filed on or about July 2, 1975 and thereafter on July 7, 1975 counsel for YPF notified the arbitrators that no reply memorandum would be filed by it. Counsel for both parties were thereafter advised by the arbitrators that they intended to make the award with-

out considering any additional submissions by the parties unless those submissions were received by September 27, 1975. YPF's and Petroleum's submissions were filed, respectively, on September 22 and September 24, 1975. In his letter of September 24, 1975 Petroleum's counsel stated, inter alia:

"We also note that the Panel will proceed to make an award on or shortly after September 27th. We assume that the Panel does not therefore intend to call any broker.... While we are pleased that the panel is proceeding to an award promptly ... we had also considered calling tanker brokers.... Our only purpose in doing so, however, was to establish the market rate at the time. However, we agree that there appears to be no need to call any broker for that purpose...." (Emphasis added).

Thereafter, on September 26, 1975 and October 2, 1975, respectively, Petroleum and YPF wrote the arbitrators offering argument and comment on the evidence.

On October 10, 1975 the Chairman wrote to counsel for both parties advising that the arbitrators had made their determination and that the award would be released upon receipt of the arbitrators' fees which were to be paid by YPF. The award was signed and dated as of October 24, 1975, but was not delivered pending receipt of the arbitrators' fees from YPF. On November 3, 1975 counsel for Petroleum in a letter to the arbitrators once again revived the possibility of introducing further evidence which he described in a further letter dated November 12, 1975 as "[p]resenting a witness which is essentially to show that Y.P.F. subsequently chartered a number of

vessels many for W 490 and at least one for as much as W 500 within the next few weeks after the fixture of the IONIAN CHALLENGER." (Emphasis added).

The arbitrators, being undecided as to their power to reopen the hearings after the award had been made although not delivered, wrote to counsel for both parties on November 24, 1975 asking for the submission of memoranda as to their authority. Coincidentally, on the same date, YPF forwarded the arbitrators' fees and the award was delivered.

Finally, on January 6, 1976, after having received the memorandum requested as to its powers and other communications, the Chairman wrote to counsel for both parties stating that "[i]n view of documentation received prior and subsequent to the signing and delivery of the award and payment of arbitrators' fees, it is the considered opinion of the Panel that its decision functions have terminated on the issues as submitted."

9 U.S.C. § 10 provides in pertinent part as follows:

"[T]he United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration -

.

(c) Where the arbitrators were guilty of misconduct ... in refusing to hear evidence pertinent and material to the controversy; ... "

The Court has carefully examined the award and the papers submitted by the parties on this petition, and believes

that certain observations are called for. In the first place, "[a]rbitrators must be given discretion to determine whether additional evidence is necessary or would simply prolong the proceedings." (Citation omitted). Catz American Co. v. Pearl Grange Fruit Exchange, Inc., 292 F. Supp. 549, 553 (S.D.N.Y. 1968). See also Northwest Airlines Inc. v. Air Line Pilots Ass'n, Int., 385 F. Supp. 634, 637 (D.D.C. 1974), rev'd on other grounds, 430 F.2d 1048 (D.C. Cir. 1976). The arbitrators were well within their rights in rendering the award over eight months after the hearing was initially closed and after Petroleum had had ample opportunity to submit further documentation prior to the award.

In the second place, the arbitrators are charged with the duty of determining what evidence is relevant and what is irrelevant and, barring a clear showing of abuse of discretion, the Court will not vacate an award based on improper evidence or the lack of proper evidence. Orion Shipping & Trading Co. v. Eastern States Petroleum Corporation of Panama, S.A., 312 F.2d 299, 300 (2d Cir.), cert. denied, 373 U.S. 949 (1963); Harbor Island Spa, Inc. v. Norwegian American Line A/S, 314 F. Supp. 471, 474 (S.D.N.Y. 1970). The evidence sought to be introduced by Petroleum, i.e., charter rates obtained by YPF "within the next few weeks after" the incident complained of appear to have little relevance as compared to more contemporaneous rates already made part of the record.

Finally, the award, except for the computation of attorneys' fees chargeable to YPF, was "mutual, final, and definite" within the context of 9 U.S.C. § 10(d). The fact that no damages were awarded Petroleum against YPF does not invalidate the award. Ilios Shipping and Trading Corp. S.A. and American Anthracite & Bituminous Coal Corp., 148 F. Supp. 698, 700 (S.D.N.Y.), aff'd, 245 F.2d 873 (2d Cir. 1957). In the instant case the arbitrators found unanimously that Petroleum suffered no damage, and they gave a rational explanation for that finding. Petitioner's motion is denied in all respects, with costs to respondent.

So ordered.

Dated: New York, New York
September 21, 1976

CHARLES H. TENNEY

U.S.D.J.

GEORGE C. PENDLETON
ATTORNEY AND COUNSELLOR AT LAW
ONE FARRAGUT SQUARE SOUTH
WASHINGTON, D.C. 20006

8 NORTH ADAMS STREET
ROCKVILLE, MARYLAND 20852

TELEPHONE
(202) 838-6021
TELEX: 64282

March 11, 1975

Mr. Arthur E. Ferris
3456 South Ocean Boulevard
Palm Beach, Florida 33480

Mr. Bruno Augenti
17 Battery Place
New York, New York 10004

Mr. Peter Siebel, Jr.
Beltic Marine Corporation
11 Broadway
New York, N.Y. 10006

Re: Ionian Challenger

Gentlemen:

The final date for filing of additional exhibits
and/or briefs was set for 10 March 1975.

Since I have not received any additional material
I have nothing to file in rebuttal. Therefore, I consider
the record closed and submitted for decision.

Very truly yours

George C. Pendleton
George C. Pendleton

GCP/vas
cc: Joseph Cardillo

March 13, 1975

Mr. Arthur E. Ferris
3456 South Ocean Boulevard
Palm Beach, Florida 33480

Mr. Bruno Augenti
17 Battery Place
New York, New York 10004

Mr. Peter Siebel, Jr.
Beltic Marine Corporation
11 Broadway
New York, New York 10006

Re: "IONIAN CHALLENGER"
C/P dtd. September 4, 1973
Our File: B-474

Gentlemen:

We refer to Mr. Pendleton's letter of March 11, 1975 concerning the captioned matter.

Mr. Cardillo, who is handling the case for this office, has been taken seriously ill and is presently in the intensive care ward in the hospital and we are therefore unable to communicate with him.

It is our understanding that he had further material which he intended to submit to the Panel. In the circumstances, we respectfully request that the Panel hold the record open until Mr. Cardillo is well enough that we can communicate with him.

Very truly yours,

CARDILLO & CORBETT

By Robert V. Corbett

RVC/lf

cc: Mr. George C. Pendleton

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GEORGE C. PENDLETON
ATTORNEY AND COUNSELLOR AT LAW
ONE FARRAGUT SQUARE SOUTH
WASHINGTON, D.C. 20006

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5 NORTH ADAMS STREET
ROCKVILLE, MARYLAND 20852

March 17, 1975

Mr. Arthur E. Ferris
3456 South Ocean Boulevard
Palm Beach, Florida 33480

Mr. Bruno Augenti
17 Battery Place
New York, New York 10004

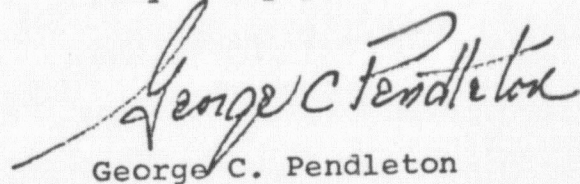
Mr. Peter Siebel, Jr.
Beltic Marine Corporation
11 Broadway
New York, New York 10006

9.20
R/C '90
Re: "Ionian Challenger
C/P dtd. September 4, 1973
Your file B-474

Gentlemen:

We are in receipt of Mr. Corbett's letter of March 13, 1975. Certainly I have no objection to extending any necessary time to Mr. Cardillo. Of course, I must reserve the right to make any appropriate response.

Very truly yours,


George C. Pendleton

GCP/vas
cc: Mr. Corbett

ARTHUR E. FERRIS
47 Winchester Drive
Manhasset, N. Y. 11030

10 October 1975

Joseph Cardillo, Jr., Esq.
Messrs. Cardillo & Corbett
29 Broadway
New York, New York 10006

George C. Pendleton, Esq.
Messrs. Pendleton & McLaughlin
700 Brawner Building
888 17th Street, N. W.
Washington, D. C. 20006

RECEIVED

OCT 14 1975

RECEIVED

ANSWERED

Re: IONIAN CHALLENGER - Arbitration
C/P dated 9/4/73

Gentlemen:

The Panel has made its determination in this case and is prepared to submit its award.

The award will be released upon receipt of arbitrators' fees which have been assessed at \$2,500.00 per arbitrator, totalling \$7,500.00, payable by Yacimientos Petroliferos Fiscales of Argentina (YPF).

Very truly yours,

Arthur E. Ferris

Arthur E. Ferris

per [signature]

AEF:eda

November 3, 1975

Mr. Arthur E. Ferris
47 Winchester Drive
Manhasset, N. Y. 11030

Re: IONIAN CHALLENGER - C/P dtd. 9/4/73
Misrepresentation Claim against YPF
Our File: B-474

Dear Mr. Ferris:

As I indicated to you in reply to your telephone call to our office, we have received additional evidence which we feel is of considerable importance to the Panel in the above case. You will recall that the Panel was alert enough to realize the importance of a broker's testimony or other testimony regarding fixtures, and we ourselves had felt and indicated that such evidence would be necessary. However, in light of the MINA fixture we concluded that it would not be necessary and apparently the Panel seems to have arrived at the same conclusion.

We have since, however, come into possession of other evidence which is of considerable importance to the Panel in order to arrive at a proper determination, and we therefore request that the hearings be reopened so that we may have an opportunity to present this evidence to the Panel. If the Panel so agrees, will you please advise us when we may have such a hearing, or whether you would prefer the evidence in documentary form.

Awaiting your advices in this respect, I am

Very respectfully yours,

Joseph Cardillo, Jr.

JC,Jr.:ER

cc.: Mr. Bruno J. Augenti
Mr. Peter Siebel, Jr.
George C. Pendleton, Esq.

PENDLETON & MCLAUGHLIN
ATTORNEYS AND COUNSELORS AT LAW

700 BRAWNER BUILDING
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GEORGE C. PENDLETON
JOHN J. MCLAUGHLIN

(202) 466 2930
TELEX: 64282

5 NORTH ADAMS
ROCKVILLE, MARYLAND

November 3, 1975

Mr. Arthur E. Ferris
47 Winchester Drive
Manhasset, New York 11030

RE: Ionian Challenger

Dear Mr. Ferris:

In your telephone call of today you informed me that at the request of Mr. Cardillo the record will be reopened for oral testimony from a ship's broker.

I should have been alert enough to make the request at that time. However, I now request that the arbitrators, as well as myself, be supplied with the following information:

- 1) the name of the proposed witness,
- 2) an outline of the testimony which he proposes to present, and
- 3) the purpose in presenting the witness.

Of course, we request the right to present a rebuttal witness after we have received the printed transcript of Mr. Cardillo's witness' testimony.

I believe that this request is eminently fair, considering that the record has been closed for many months. Indeed, for the record, I object to the reopening at this time. Moreover, as I told you I am facing surgery which will hospitalize me for an unknown length of time. My partner is neither experienced in maritime law, nor acquainted with the facts of this case.

Very truly yours,


George C. Pendleton

GCP/vst

cc: Peter Seibel
Bruno Augenti

ARTHUR E. FERRIS

3456 S. Ocean Blvd.

Palm Beach, Florida 33480

24 November 1975

George C. Pendleton, Esq.
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700 Brawner Building
888 17th Street
Washington, D. C. 20006

Joseph Cardillo, Esq. ✓
Messrs. Cardillo & Corbett
29 Broadway
New York, New York 10006

RECEIVED
9:15 AM
NOV 25 1975
Jc

Re: "IONIAN CHALLENGER" - Arbitration
C/P dated 9/4/73

Gentlemen:

The Panel acknowledges the receipt of your various letters prompted by Mr. Cardillo's letter of November 3, 1975 requesting re-opening of the hearings.

Since one of the parties objects to the re-opening, the question of re-opening becomes a matter for decision by the Panel. Under Section 30 of the Rules of the Society of Maritime Arbitrators, it would appear that the propriety of re-opening is dependent on several considerations.

First, the application by a party must be based on "good cause shown before the award is made". If in fact there were newly discovered evidence, the Panel would have re-opened in the interest of justice. But, a majority of the Panel believes that a second question arises here as to whether the application is timely, that is, was it presented "before the award (was) made". Whether the signed but unreleased award made in this case completed the Panel's function so that it no longer has any jurisdiction to re-open would seem to us to be a legal question, not determinable by this Panel without receiving a legal memorandum on the subject. An improper re-opening, after our jurisdiction had terminated, might invalidate the award.

Third, the right of the Panel, on its own, to re-open the case is subject to the limitation that it do so "before the award is made" thus again giving rise to the difficulty discussed in the preceding paragraph.

Accordingly, a majority of the Panel would appreciate it if each Counsel would submit a memorandum of law showing that Panel does or does not have the right to re-open under existing circumstances. The Panel is of course interested in seeing that justice is done. But it cannot act if its power to act has come to an end.

Page 2 - 24 November 1975
George C. Pendleton, Esq.
Joseph Cardillo, Jr., Esq.
Re: "Ionian Challenger"-Arbitration

We trust that the memoranda of law will be submitted by each Counsel as soon as possible, not later than 15 December 1975.

Pending Arbitrators' decision as to re-opening, the Award will not be released.

Very truly yours,

Arthur E. Ferris

Arthur E. Ferris

per [unclear]

AEF:ed

CC: Bruno J. Augenti
Peter Siebel

ARTHUR E. FERRIS
3456 S. Ocean Boulevard
Palm Beach, Florida 33480

6 January 1976

Joseph Cardillo, Jr., Esq.
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Re: IONIAN CHALLENGER - Arbitration
C/P dated 9/4/73

Gentlemen:

Panel acknowledges receipt of various communications from both Counsel including Mr. Cardillo's Supplemental Memorandum of Law dated 11 December 1975, the contents of all of which have been noted.

In view of documentation received prior and subsequent to the signing and delivery of the award and payment of arbitrators' fees, it is the considered opinion of the Panel that its decision functions have terminated on the issues as submitted.

However, in respect to Counsel's fees, Panel calls attention to the wording of the award which states that Charterer "will pay all costs of this arbitration including arbitrators' fees, stenographic fees and claimant's reasonable attorney fees". This language was decided on after deliberation and is based on the fact that Panel did not have the necessary information as to the time spent and expenses incurred by Owner's Counsel. More importantly, Panel decided that the arbitrators have neither the responsibility nor the authority to decide the amount of Counsel's fees. Further, arbitrators stand ready, if a dispute arises as to the amount of Counsel's fees when submitted, to reconvene, adjudicate the issue and submit an addendum to the award.

Panel has unanimously agreed to the above.

Very truly yours,

Arthur E. Ferris

Arthur E. Ferris, Chairman

AEF:eda

CC: Mr. Peter Siebel, Jr.
Mr. Bruno J. Augenti